

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2541

Introduced by Assembly Member Bass

February 22, 2008

An act to amend Section 851.90 of, to amend and renumber Section 1000.8 of, to add and repeal Chapter 2.6 (commencing with Section 1000.8) of Title 6 of Part 2 of, and to add and repeal Part 4.5 (commencing with Section 14500) of, the Penal Code, relating to reentry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, as amended, Bass. Reentry courts: deferred entry of judgment.

Under existing law, the Department of Corrections and Rehabilitation is required to establish 3 pilot programs to provide intensive training and counseling for female parolees to assist in the successful reintegration of those parolees into the community, a pilot reentry program in East Palo Alto and a pilot prerelease parole program in Alameda County. Existing law also requires the department to provide various education, drug treatment, and skills training to inmates and parolees. Existing law further requires the establishment of a Reentry Advisory Committee to advise the secretary on all matters related to the successful statewide planning, implementation, and outcomes of all reentry programs and services provided by the department.

This bill would authorize a superior court, until January 1, 2012, to develop and operate a deferred entry of judgment reentry program

targeted at preventing recidivism among nonviolent *low-level drug sale* offenders. The bill would specify the characteristics of that program and the process for eligibility for the program. The bill would also authorize, until January 1, 2012, ~~no more than 3 San Francisco and 2 other~~ counties to develop and implement a court-based reentry program. The bill would specify the characteristics of a reentry program and would require the presiding judge, district attorney, ~~public defender a representative of the criminal defense bar selected by the court, the~~ Board of Parole Hearings, and the Department of Corrections and Rehabilitation to enter into an agreement about the jurisdiction of the program, as specified. *The bill would also require the district attorney of any participating county to submit a report, as specified, regarding the court-based reentry program to appropriate committees of the Legislature no later than November 15, 2011.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Every year, approximately 125,000 California prisoners are
- 4 released from California prisons. Of those released, more than half
- 5 will return to prison within two years and more than 70 percent
- 6 will return within three years, many for committing more crimes,
- 7 which will result in more victims.
- 8 (b) Many former offenders exit prison utterly unprepared to live
- 9 crime free, often not having addressed the underlying problems
- 10 that contributed to their criminal behavior, including lack of
- 11 employment, lack of job readiness, substance abuse problems,
- 12 reentry problems, and lack of housing.
- 13 (c) Approximately 95 percent of state prisoners will eventually
- 14 be released. Thus, without an effective strategy for preventing
- 15 former offenders from reentering prison, the safety of our
- 16 communities is at enormous risk.
- 17 (d) California taxpayers pay significantly when former offenders
- 18 reoffend. For each person who ends up back in prison, taxpayers
- 19 pay more than \$43,000 per year.

1 (e) Successful models exist for planning for, supervising, and
2 ultimately ensuring the successful, crime-free reentry of former
3 offenders into society.

4 (f) The San Francisco District Attorney's office has developed
5 an effective reentry program, Back On Track. Among low-level,
6 nonviolent drug sellers, the three-year recidivism rate for Back On
7 Track participants is significantly lower than the 53 percent
8 recidivism rate for the same population in state prison. As a result,
9 the Back On Track program has been selected as a national model.

10 (g) Successful reentry models combine a continuity of services
11 before and after release and legal mechanisms for holding former
12 offenders accountable for becoming self-sufficient and living
13 crime-free.

14 (h) The most successful models for preventing recidivism
15 include public-private partnerships among law enforcement,
16 government agencies, business and labor associations, private
17 employers, and community-based organizations, formed to create
18 living wage employment opportunities for eligible former offenders
19 and to take advantage of existing programs and incentives for
20 hiring former offenders.

21 *SEC. 1.5. Section 851.90 of the Penal Code is amended to*
22 *read:*

23 851.90. (a) (1) Whenever a person is diverted pursuant to a
24 drug diversion program administered by a superior court pursuant
25 to Section 1000.5 or is admitted to a deferred entry of judgment
26 program pursuant to Section 1000; *or 1000.8*, the person
27 successfully completes the program, and it appears to the judge
28 presiding at the hearing where the diverted charges are dismissed
29 that the interests of justice would be served by sealing the records
30 of the arresting agency and related court files and records with
31 respect to the diverted person, the judge may order those records
32 and files to be sealed, including any record of arrest or detention,
33 upon the written or oral motion of any party in the case, or upon
34 the court's own motion, and with notice to all parties in the case.

35 (2) If the order is made, the clerk of the court shall thereafter
36 not allow access to any records concerning the case, including the
37 court file, index, register of actions, or other similar records.

38 (3) If the order is made, the court shall give a copy of the order
39 to the defendant and inform the defendant that he or she may
40 thereafter state that he or she was not arrested for the charge.

1 (4) The defendant may, except as specified in subdivisions (b),
2 (c), and (d), indicate in response to any question concerning the
3 defendant's prior criminal record that the defendant was not
4 arrested or granted statutorily authorized drug diversion or deferred
5 entry of judgment for the offense.

6 (5) Subject to subdivisions (b), (c), and (d), a record pertaining
7 to an arrest resulting in the successful completion of a statutorily
8 authorized drug diversion or deferred entry of judgment program
9 shall not, without the defendant's permission, be used in any way
10 that could result in the denial of any employment, benefit, or
11 certificate.

12 (6) Sealing orders made pursuant to this subdivision shall not
13 be forwarded to the Department of Justice to be included or notated
14 in the department's manual or electronic fingerprint image or
15 criminal history record systems. Any sealing order made pursuant
16 to this subdivision and received by the Department of Justice need
17 not be processed by the department.

18 (b) The defendant shall be advised that, regardless of the
19 defendant's successful completion of a statutorily authorized drug
20 diversion or deferred entry of judgment program, the arrest upon
21 which the case was based shall be disclosed by the Department of
22 Justice in response to any peace officer application request, and
23 that, notwithstanding subdivision (a), this section does not relieve
24 the defendant of the obligation to disclose the arrest in response
25 to any direct question contained in any questionnaire or application
26 for a position as a peace officer, as defined in Section 830.

27 (c) The defendant shall be advised that, regardless of the
28 defendant's successful completion of a statutorily authorized drug
29 diversion or deferred entry of judgment program, the arrest upon
30 which the case was based shall be disclosed by the Department of
31 Justice or the court in which the matter was heard in response to
32 any subsequent inquiry by the district attorney, court, probation
33 department, or counsel for the defendant concerning the defendant's
34 eligibility for any statutorily authorized drug diversion or deferred
35 entry of judgment program in the future.

36 (d) A sealing order made pursuant to this section shall not apply
37 to any record or document received or maintained by the
38 Department of Justice; the court shall advise a defendant that,
39 notwithstanding the issuance of a sealing order pursuant to this
40 section, the Department of Justice shall continue to be able to

1 maintain and disseminate any records or documents received or
2 maintained by the department, as authorized by law.

3 SEC. 2. Section 1000.8 of the Penal Code is amended and
4 renumbered to read:

5 1000.6. (a) Where a person is participating in a deferred entry
6 of judgment program or a preguilty plea program pursuant to this
7 chapter, the person may also participate in a licensed methadone
8 or levoalphacetylmethadol (LAAM) program if the following
9 conditions are met:

10 (1) The sheriff allows a methadone program to operate in the
11 county jail.

12 (2) The participant allows release of his or her medical records
13 to the court presiding over the participant's preguilty or deferred
14 entry program for the limited purpose of determining whether or
15 not the participant is duly enrolled in the licensed methadone or
16 LAAM program and is in compliance with deferred entry or
17 preguilty plea program rules.

18 (b) If the conditions specified in paragraphs (1) and (2) of
19 subdivision (a) are met, participation in a methadone or LAAM
20 treatment program shall not be the sole reason for exclusion from
21 a deferred entry or preguilty plea program. A methadone or LAAM
22 patient who participates in a preguilty or deferred entry program
23 shall comply with all court program rules.

24 (c) A person who is participating in a deferred entry of judgment
25 program or preguilty plea program pursuant to this chapter who
26 participates in a licensed methadone or LAAM program shall
27 present to the court a declaration from the director of the methadone
28 or LAAM program, or the director's authorized representative,
29 that the person is currently enrolled and in good standing in the
30 program.

31 (d) Urinalysis results that only establish that a person described
32 in this section has ingested or taken the methadone administered
33 or prescribed by a licensed methadone or LAAM program shall
34 not be considered a violation of the terms of the deferred entry of
35 judgment or preguilty plea program under this chapter.

36 (e) Except as provided in subdivisions (a) to (d), inclusive, this
37 section shall not be interpreted to amend any provisions governing
38 deferred entry and diversion programs.

39 SEC. 3. Chapter 2.6 (commencing with Section 1000.8) is
40 added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.6. DEFERRED ENTRY OF JUDGMENT REENTRY
PROGRAM

1000.8. A superior court may develop and operate a deferred entry of judgment reentry program targeted at preventing recidivism among nonviolent *low-level drug sales* offenders. *No defendant who has been convicted of a violation of an offense enumerated in subdivision (c) of Section 290 or in Section 1192.7 shall be eligible for the program established in this chapter. The prosecuting attorney, together with the presiding judge and a representative of the criminal defense bar selected by the presiding judge of the superior court may agree in writing to establish a “Back on Track” deferred entry program pursuant to the provisions of this chapter. The agreement shall specify which low-level drug sales offenses under the Health and Safety Code will be eligible for the program and a process for selecting participants.* The program shall have the following characteristics:

(a) A dedicated calendar or a locally developed deferred entry of judgment program.

(b) Leadership by a superior court judicial officer who is assigned by the presiding judge.

(c) An appropriate level of transitional services for each participant, based on available resources from county and community reentry providers and other agencies, to address the issues identified during the assessment performed in Section

1000.9. The transitional services may include the following:

(1) Job training, readiness, and placement.

(2) Life skills and “soft” skills training.

(3) Mental health treatment.

(4) Substance abuse treatment.

(5) Assistance with obtaining identification cards and driver’s licenses.

(6) Assistance with expungement of criminal and arrests records and other barriers to employment, where appropriate.

(7) Parenting skills and assistance with child support obligations.

(d) Clearly defined criteria for successful progress and completion of the program.

~~(d)~~

(e) Legal incentives for defendants for progress and successful completion of the program, including modification of conditions

1 or terms of probation, dismissal or reduction of criminal charges
2 upon successful completion of the program, and assistance with
3 expungement of prior criminal convictions.

4 (e)

5 (f) Graduated sanctions and frequent, ongoing appearances
6 before the court regarding the progress of the defendant to ensure
7 that the defendant successfully completes the program and complies
8 with any other terms and conditions that will optimize the
9 likelihood that the defendant will complete the program. The court
10 may use available legal mechanisms including return to custody
11 if necessary, for failure to comply with the supervised plan.

12 (f)

13 (g) The program may develop a local, public-private partnership
14 between law enforcement, government agencies, private employers,
15 and community-based organizations for the purpose of creating
16 meaningful employment opportunities for eligible former offenders
17 and to take advantage of existing programs and incentives for
18 hiring defendants participating in the program.

19 1000.9. ~~The court shall hold a hearing to~~ *prosecuting attorney*
20 *shall* determine whether a defendant is eligible for a deferred entry
21 of judgment reentry program.

22 (a) To assist ~~the court~~ in determining whether the defendant is
23 eligible for the program, the prosecuting attorney, or the court on
24 its own, may make a motion to require that the defendant undergo
25 an individualized assessment to determine what support services,
26 treatment plans, and programs are needed to address the
27 defendant's criminal behavior. Upon the motion of the prosecuting
28 attorney, the court may require the defendant to participate in up
29 to 200 hours of community service or perform restitution prior to
30 determining whether the defendant is eligible for the program.

31 (b) If the prosecuting attorney determines that this section may
32 be applicable to the defendant, he or she shall advise the defendant
33 and his or her attorney in writing of that determination. This
34 notification shall include the following:

35 (1) A full description of the procedures for deferred entry of
36 judgment.

37 (2) A general explanation of the role and authority of the
38 prosecuting attorney, the program, and the court in the process.

39 (3) A clear statement that in lieu of trial, the court may grant
40 deferred entry of judgment with respect to the current crime or

1 crimes charged if the defendant pleads guilty to each charge and
2 waives time for the pronouncement of judgment, and that, upon
3 the defendant's successful completion of the program and the
4 motion of the prosecuting attorney, the court will dismiss the
5 charge or charges against the defendant and the provisions of
6 ~~Section~~ *Sections 851.90 and 1203.4* will apply.

7 (4) A clear statement that failure to comply with any condition
8 under the program may result in the prosecuting attorney or the
9 court making a motion for entry of judgment, whereupon the court
10 will render a finding of guilty to the charge or charges pled, enter
11 judgment, and schedule a sentencing hearing as otherwise provided
12 in this code.

13 (5) An explanation of criminal record retention and disposition
14 resulting from participation in the deferred entry of judgment
15 program and the defendant's rights relative to answering questions
16 about his or her arrest and deferred entry of judgment following
17 successful completion of the program.

18 (c) If the ~~court~~ *prosecuting attorney* determines that the
19 defendant is eligible for the program, the ~~court~~ *prosecuting attorney*
20 shall state for the record the grounds upon which the determination
21 is based and shall make this information available to the defendant
22 and his or her attorney. This procedure is intended to allow the
23 court to set the hearing for deferred entry of judgment at the
24 arraignment. ~~If the prosecuting attorney objects to granting the~~
25 ~~defendant deferred entry of judgment under this section, the court~~
26 ~~may nonetheless grant deferred entry of judgment to the defendant~~
27 ~~if the court has ordered the defendant's individualized assessment~~
28 ~~pursuant to subdivision (a) and has considered the results of the~~
29 ~~assessment in making its determination regarding the defendant's~~
30 ~~eligibility for the program.~~

31 (d) If the ~~court~~ *prosecuting attorney* determines that the
32 defendant is ineligible for the program, the ~~court~~ *prosecuting*
33 *attorney* shall state for the record the grounds upon which the
34 determination is based and shall make this information available
35 to the defendant and his or her attorney. The sole remedy of a
36 defendant who is found ineligible for deferred entry of judgment
37 is a postconviction appeal. If the ~~court~~ *prosecuting attorney* does
38 not deem the defendant eligible, or the defendant does not consent
39 to participate, the proceedings shall continue as in any other case.

1 (e) *Upon a motion by the prosecuting attorney for an entry of*
2 *judgment, before entering a judgment of guilty, the court may hold*
3 *a hearing to determine whether the defendant has failed to comply*
4 *with the program and should be terminated from the program.*

5 1000.10. A defendant's plea of guilty pursuant to this chapter
6 shall not constitute a conviction for any purpose unless a judgment
7 of guilty is entered pursuant to Section 1000.3.

8 1000.11. This chapter shall remain in effect until January 1,
9 2012, and as of that date is repealed, unless a later enacted statute
10 deletes or repeals that date.

11 SEC. 4. Part 4.5 (commencing with Section 14500) is added
12 to the Penal Code, to read:

13
14 PART 4.5. RECIDIVISM PREVENTION

15
16 TITLE 1. REENTRY COURTS

17
18 14500. Counties, *in consultation with superior courts*, may
19 develop and implement court-based reentry programs, to be
20 operated as pilot programs until January 1, 2012. The total number
21 of counties authorized under this section shall not exceed three
22 *and shall include the City and County of San Francisco and up to*
23 *two other counties that apply to the Department of Corrections*
24 *and Rehabilitation to develop a program pursuant to this chapter..*

25 14501. (a) The purposes of a reentry court are to reduce
26 recidivism among parolees and to increase public safety.

27 (b) A court-based reentry program shall have the following
28 characteristics:

29 (1) A dedicated calendar or a locally developed court-supervised
30 reentry program.

31 (2) A process for developing an individualized plan for the
32 successful, crime-free reentry of each parolee into society.

33 (3) Leadership by a superior court judicial officer, who is
34 assigned by the presiding judge.

35 (4) Cooperation between judicial officers, the Board of Parole
36 Hearings, local law enforcement, and community-based treatment
37 and service providers.

38 (5) A process for providing individualized assessments, support
39 services, and treatment plans for parolees to address underlying
40 issues driving criminal behavior.

1 (6) Supervision of reentering parolees in order to maintain
2 progress in fulfilling their reentry plans.

3 (7) A means of holding parolees accountable for successfully
4 completing the program through a combination of graduated
5 sanctions, including return to custody, incentives, and other legal
6 mechanisms.

7 (8) Program incentives, which may include modifying the
8 conditions or terms of parole, treatment programming, assistance
9 with child support, employment training, records support such as
10 assistance obtaining identification cards and driver's licenses, and
11 expungement of prior criminal convictions.

12 14502. In developing a court-based reentry program pursuant
13 to this title, the district attorney, ~~the public defender a~~
14 *representative of the criminal defense bar designated by the*
15 *presiding judge of the superior court*, the presiding judge of the
16 superior court, and the Board of Parole Hearings or other designee
17 of the Department of Corrections and Rehabilitation, shall develop
18 a plan that addresses, at a minimum, the following components:

19 (a) The method by which the court-based reentry program will
20 ensure that the target population of defendants will be identified
21 and referred to the reentry court, *including the use of validated*
22 *risk and needs assessment tools to determine the appropriate target*
23 *population for the program.*

24 (b) Eligibility criteria specifying what factors will make the
25 defendant eligible to participate in a court-based reentry program,
26 including whether the defendant can benefit from the program, the
27 facts of the current criminal conviction, as well as prior criminal
28 history, and substance abuse and mental health treatment history.

29 (c) The treatment and supportive services of the program.

30 (d) The process to ensure defendants will receive an appropriate
31 level of treatment services, based on available resources, from
32 county and community-based reentry providers and other agencies.

33 (e) *(1) Clearly defined criteria for successful program*
34 *completion, including goals for employment, education, treatment*
35 *adherence, and parenting, if applicable.*

36 (2) Frequent, ongoing reviews of the progress of the offender
37 in treatment in order to ensure the offender adheres to the treatment
38 plan, remains in treatment, and completes treatment.

39 (f) A requirement that participants in the court-based reentry
40 program complete the recommended reentry plan, including

1 compliance with any other terms and conditions that optimize the
2 likelihood that the defendant will complete the program.

3 (g) An agreement between the defendant and the other parties
4 listed in this section regarding the jurisdiction of the court-based
5 reentry program. The agreement shall specify whether the ~~program~~
6 ~~court~~, the Board of Parole Hearings, or both, will exercise
7 jurisdiction over all of the following:

8 (1) Sanctions for failing to comply with the program or the
9 court's orders, including ordering a parolee returned ~~to prison for~~
10 ~~parole revocation proceedings~~.

11 (2) Providing incentives to parolees who successfully progress
12 or complete the program, including modifying conditions or term
13 of parole or suspending revocation of parole pending the parolee's
14 successful completion of the reentry court program.

15 (3) Any other terms and conditions that will optimize the
16 likelihood that a parolee will complete the program.

17 14503. A court-based reentry program may issue any order
18 that falls within the scope of the agreement made pursuant to
19 subdivision (g) of Section 14502.

20 *14504. At its own expense, the district attorney of any county*
21 *or city and county establishing a pilot program pursuant to this*
22 *part shall perform an evaluation of the pilot program or engage*
23 *a third party with expertise in program evaluation to conduct an*
24 *external evaluation. The evaluation shall document the effect of*
25 *the program on the rate of parolee recidivism, the rate at which*
26 *participants in the program successfully complete parole, parolee*
27 *education and employment levels, and quantification of the annual*
28 *costs and savings of the program to parole, corrections, law*
29 *enforcement, and courts. The district attorney shall submit a report*
30 *of the evaluation to the appropriate committees of the Legislature*
31 *no later than November 15, 2011.*

32 14505. This part shall remain in effect until January 1, 2012,
33 and as of that date is repealed, unless a later enacted statute deletes
34 or repeals that date.